

Single Electricity Market

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| Final REcommendation Report*Mod\_02\_12: amendment of credit cover requirements*08 May 2012 |

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Document History

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| **Version** | **Date** | **Author** | **Comment** |
| 0.2 | 30 April 2012 | Modifications Committee Secretariat | Issued to Modifications Committee for review and approval |
| 1.0 | 08 May 2012 | Modifications Committee Secretariat | Issued to Regulatory Authorities for final decision |

Reference Documents

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| **Document Name** |
| [Trading and Settlement Code](http://semopub/MarketDevelopment/MarketRules/TSC.doc)  |
| [Mod\_02\_12 Amendment of Credit Cover Requirements](file://em-prcfs01.corp.aime.local/Common%24/Aime/Market%20Development/Mods%20Panel/ALL%20MOD%20DOCS%20BY%20MEETING/2012/Meeting%2041/FRRs/Mod_01_12%3A%20Representation%20of%20Demand%20Side%20Units%20on%20the%20Modification%20Committee) |
| [Mod\_02\_12 V2 Amendment of Credit Cover Requirements](http://semopub/MarketDevelopment/ModificationDocuments/Mod_02_12_v2.docx) |

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# MODIFICATIONS COMMITTEE RECOMMENDATION

## Recommended for Approval – unanimous Vote

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| --- |
| **Mod\_02\_12\_v2: Recommended for Approval** |
| Julie-Anne Hannon | Supplier Alternate | Approve |
| Sean Doolin | Supplier Alternate | Approve |
| Ian Luney | Generator Member | Approve |
| William Steele | Supplier Member | Approve |
| Mary Doorly | Generator Alternate | Approve |
| Kevin Hannafin | Generator Member | Approve |
| Niamh Quinn | Generator Member | Approve |
| Iain Wright | Supplier Member | Approve |

# Background

This Modification Proposal was raised by Vayu and was received by the Secretariat on 17 January 2012 The proposal was presented at Meeting 40 on 31 January 2012 where it was deferred. An alternative version of the proposal was received by the Secretariat on 13 March 2012. This version would allow a 3rd Party provide credit cover by way of a Letter of Credit on behalf of a Market Participant in respect of the Market Participant’s obligation to SEM. The Modification Proposal was again discussed at Meeting 41 on 27 March 2012 where it was voted on. The changes proposed take account of the recently approved Modifications to the LOC (Mod\_23\_11 and Mod\_29\_11).

# PURPOSE OF PROPOSED MODIFICATION

## 3A.) Justification for Modification

Under the current rules the Letter of Credit Applicant must be a Market Participant. This proposal would allow more flexibility for Market Participants to satisfy their credit cover obligations and takes account of the tighter access to such products in today’s banking market. The current arrangements could be construed as a barrier to new market entrants.

## 3B.) Impact of not Implementing a Solution

Existing market Participants could be forced out of the SEM and it also restricts the ability of new entrants to become parties to the TSC.

## 3c.) Impact on Code Objectives

The proposal furthers the following objectives:

3. to facilitate the participation of electricity undertakings engaged in the generation, supply or sale of electricity in the trading arrangements under the Single Electricity Market

4. to promote competition in the single electricity wholesale market on the island of Ireland

6. to ensure no undue discrimination between persons who are parties to the Code

7. to promote the short-term and long-term interests of consumers of electricity on the island of Ireland with respect to price, quality, reliability, and security of supply of electricity

# Assessment of Alternatives

Two versions were considered over the lifecycle of the proposal, both raised by Vayu. See the appendices of this report for both versions of the proposal.

# Working Group and/or Consultation

N/A

# impact on systems and resources

N/A

# Impact on other Codes/Documents

N/A

# MODIFICATION COMMITTEE VIEWS

## Meeting 40 – 31 January 2012

Proposer outlined background of proposal. This proposal would allow a 3rd Party provide credit cover by way of a Letter of Credit on behalf of a Market Participant, in respect of the Market Participant’s obligation to SEM. Proposer advised that under the current rules the Letter of Credit Applicant must be a Market Participant. This proposal would allow more flexibility for Market Participants to satisfy their credit cover obligations and takes account of the tighter access to such products in today’s banking market. Proposer advised that the current arrangements could be construed as a barrier to new market entrants. Proposer advised that no legal text had been drafted prior to the Meeting, and that discussion on the proposal had been had with SEMO.

SEMO Member advised that SEMO have no issue with a 3rd party providing a LOC for a Participant however the Participant must be named in the beneficiary statements e.g. Glencore on behalf of Vayu, and SEMO’s view is that they should be an affiliate of the Participant. SEMO Member advised that if approved, the proposal would require a change to the LOC template. SEMO Member advised that the proposal arose from VAYU trying to use an international bank that was not allowed under the Code. SEMO Member advised that Mod\_16\_11 Credit Worthiness Test for the SEM Bank may alleviate this issue as it may broaden out the requirements enough to satisfy VAYU’s requirement, if it is approved.

Supplier Member expressed the view that the fundamental issue is whether the LOC provider could be trusted to pay and why could any 3rd Party not provide an LOC for a Participant..

SEMO Member advised that perhaps SEMO is being somewhat conservative as the modification proposes moving away from the current situation where a Participant must get an LOC themselves. SEMO’s main concern is that they can draw down on an LOC if required and if neither the market Participant nor an affiliate was able to get an LOC on their own behalf; if not, their credit rating might be a cause for concern. However, SEMO agreed to review this further.

Supplier Member stated that it is necessary to see the proposed legal drafting before attempting to ascertain it will comply with the Code.

Supplier Member queried as to whether it would be possible to know whether a bank would pay for the Participant. SEMO Member advised that there would need to be a stipulation in the beneficiary statement and that the market Participant would be explicitly named in there.

At the Meeting an action was placed on SEMO to work with proposer on the legal drafting of proposal.

## Meeting 41 – 31 January 2012

Supplier Member queried as to whether banks will facilitate a Letter of Credit (LOC) with the proposed wording? Supplier Member raised an additional query as to whether the SEM Bank can execute it if approved? MO Alternate advised that it sought advice in this regard and does not expect LOC providers to have any issue with the revised wording. In addition, it is satisfied that it would have no issue drawing down on a LOC based on the wording set out in Mod\_02\_12\_v2.

# Proposed Legal Drafting

As proposed in Appendix 2.

#  LEGAL REVIEW

Complete

# IMPLEMENTATION TIMESCALE

The proposed implementation date is one working day after the day on which the Regulatory Authority decision is made. It is proposed that this Modification is made on a Settlement Day basis.

# Appendix 1: Mod\_02\_12 original version

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| **MODIFICATION PROPOSAL FORM** |
| **Proposer***(Company)* | **Date of receipt***(assigned by Secretariat)* | **Type of Proposal***(delete as appropriate)* | **Modification Proposal ID***(assigned by Secretariat)* |
| **Vayu Limited** | **17 January 2012** | **Standard** | **Mod\_02\_12** |
| **Contact Details for Modification Proposal Originator** |
| **Name** | **Telephone number** | **Email address** |
| **Bryan Hennessy****Ross Kelly** | **+353-1-8849400** | bryan.hennessy@vayu.ieross.kelly@vayu.ie |
| **Modification Proposal Title** |
| **Amendment of Credit Cover requirements** |
| **Documents affected***(delete as appropriate)* | **Section(s) Affected** | **Version number of T&SC or AP used in Drafting** |
| **T&SC** | **Section 6 – Financial and Settlement & Appendix A – Standard Letter of Credit** | **Version 10**  |
| **Explanation of Proposed Change***(mandatory by originator)* |
| This proposal would allow a 3rd Party provide credit cover by way of a Letter of Credit on behalf of a Market Participant in respect of the Market Participant’s obligation to SEM.  |
| **Legal Drafting Change***(Clearly show proposed code change using* ***tracked*** *changes, if proposer fails to identify changes, please indicate best estimate of potential changes)* |
|  |
| **Modification Proposal Justification***(Clearly state the reason for the Modification)* |
| Under the current rules the Letter of Credit Applicant must be a Market Participant. This proposal would allow more flexibility for Market Participants to satisfy their credit cover obligations and takes account of the tighter access to such products in today’s banking market. The current arrangements could be construed as a barrier to new market entrants.  |
| **Code Objectives Furthered***(State the Code Objectives the Proposal furthers, see Section 1.3 of T&SC for Code Objectives)* |
| The proposal furthers the following objectives:3. to facilitate the participation of electricity undertakings engaged in the generation, supply or sale of electricity in the trading arrangements under the Single Electricity Market4. to promote competition in the single electricity wholesale market on the island of Ireland6. to ensure no undue discrimination between persons who are parties to the Code7. to promote the short-term and long-term interests of consumers of electricity on the island of Ireland with respect to price, quality, reliability, and security of supply of electricity |
| **Implication of not implementing the Modification Proposal***(State the possible outcomes should the Modification Proposal not be implemented)* |
| Existing market Participants could be forced out of the SEM and it also restricts the ability of new entrants to become parties to the TSC.  |
| **Working Group***(State if Working Group considered necessary to develop proposal)* | **Impacts***(Indicate the impacts on systems, resources, processes and/or procedures)* |
|  |  |
| ***Please return this form to Secretariat by email to*** *modifications@sem-o.com* |

# Appendix 2: Mod\_02\_12\_V2 alternative version

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| **MODIFICATION PROPOSAL FORM** |
| **Proposer** | **Date of receipt** | **Type of Proposal** | **Modification Proposal ID** |
| **Vayu Limited** | **13 March 2012** | **Standard** | **Mod\_02\_12\_V2** |
| **Contact Details for Modification Proposal Originator** |
| **Name** | **Telephone number** | **Email address** |
| **Bryan Hennessy****Ross Kelly** | **+353-1-8849400** | bryan.hennessy@vayu.ieross.kelly@vayu.ie |
| **Modification Proposal Title** |
| **Amendment of Credit Cover requirements** |
| **Documents affected** | **Section(s) Affected** | **Version number of T&SC or AP used in Drafting** |
| **T&SC** | **Appendix A – Standard Letter of Credit** | **Version 10**  |
| **Explanation of Proposed Change***(mandatory by originator)* |
| This proposal would allow a 3rd Party provide credit cover by way of a Letter of Credit on behalf of a Market Participant in respect of the Market Participant’s obligation to SEM.  |
| **Legal Drafting Change***(Clearly show proposed code change using* ***tracked*** *changes, if proposer fails to identify changes, please indicate best estimate of potential changes)* |
| 1. Standard Letter of Credit

A.1 This Appendix A contains a standard template for a Letter of Credit. Form of Doc Credit: IRREVOCABLE STANDBY LETTER OF CREDITDocumentary Credit Number:Date of Issue:Applicable Rules: UCP [LATEST VERSION NO]Date and Place of Expiry:Applicant ([insert Participant’s name] or [insert company name]on behalf of [insert Participant’s name]Beneficiary: EirGrid plc and SONI Limited, trading as SEMO”, being the Market Operator under the SEM Trading and Settlement Code. [address]Currency Code, Amount (Maximum total amount):Available With (ADVISING BANK IE SEMO'S BANK BY PAYMENT)Partial Shipments/Drawings: AllowedDocuments required:Beneficiary Statement, as detailed below, must be on Market Operator letterheadQUOTE:"We, the Market Operator under the Trading and Settlement Code (the “Beneficiary”) hereby state that [insert Participant’s name] is in default of its obligation to pay pursuant to the Trading and Settlement Code (to which the Participant is a party) under paragraph [ insert details] and as a result we hereby demand …………..[insert amount being claimed] under Standby Letter of Credit number…….... issued by …………[insert name of Issuing Bank]. Payment in respect of this Beneficiary Statement shall be effected immediately to [insert relevant account details]. We confirm that the signatory (ies) to this Beneficiary Statement are empowered to sign and make this Beneficiary Statement on behalf of the Beneficiary.Terms defined in the Standby Letter of Credit referred to above have the same meaning when used in this Beneficiary Statement."SIGNED FOR AND ON BEHALF OF THE MARKET OPERATOR.NAME...................... TITLE.............UNQUOTEAdditional Conditions:1. Trading and Settlement Code means the trading arrangements for the SEM
2. established in Northern Ireland pursuant to section 23 of the Northern Ireland (Miscellaneous Provisions) Act 2006 and the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 and in Ireland pursuant to section 9BA(1) of the Electricity Regulation Act 1999 and as designated pursuant to regulations made under section 9BA(2)(a) of the Electricity Regulation Act 1999 (Ireland).
3. This irrevocable Standby Letter of Credit is available by payment at sight against presentation to the Advising Bank of a Beneficiary Statement as detailed in Documents required.
4. The Beneficiary Statement must be made on original letterhead paper of the Beneficiary and signed on its behalf, and must be presented to the Advising Bank on or before the Expiry Date.
5. Upon receipt of a signed Beneficiary Statement in compliance with the above conditions the Advising Bank is required promptly to notify us by SWIFT of receipt of such Beneficiary Statement and inform us of the relevant details of such Beneficiary Statement. Provided such notification is received by us no later than 14:00 hrs on any weekday on which banks are open for business in Dublin and Belfast, we shall make payment under this Standby Letter of Credit for Same Day Value on that day or if received after 14.00hrs on the next such weekday in accordance with such notification and shall confirm payment by notifying the Advising Bank by SWIFT.
6. Where we, the Issuing Bank are also the Advising Bank, we may revise the above notification requirements as appropriate provided that this shall in no way affect the obligation on us to make payment under this Standby Letter of Credit.
7. We the Issuing Bank hereby waive any right to set off or counterclaim whatsoever against any amounts payable under this Standby Letter of Credit in respect of any claims we may have against the Beneficiary and such amounts shall be paid free and clear of all deductions or withholdings whatsoever.
8. Effective From:

This Letter of Credit shall be governed by and construed in accordance with the laws of Northern Ireland and the parties submit to the exclusive jurisdiction of the Courts of Ireland and the Courts of Northern Ireland for all disputes arising under, out of, or in relation to this Letter of Credit.Charges:All Issuing Bank charges are for the account of the Applicant.All Advising Bank charges are for the account of the BeneficiaryConfirmation:CONFIRMATION WITH OR WITHOUT? (THIS INSTRUCTION IS TO SEMO'S BANK TO ADD CONFIRMATION OR NOT)Instruction to Pay:PLEASE REFER TO ADDITONAL CONDITIONS.ADVISING BANK TO CLAIM REIMBURSEMENT BY SWIFT AND RETAIN BENEFICIARY STATEMENT ON FILE.**APPENDIX**[Market Operator letterhead]We, the Market Operator under the Trading and Settlement Code (the “Beneficiary”) hereby state that [insert Participant’s name] is in default of its obligation to pay pursuant to the Trading and Settlement Code (to which the Participant is a party) under paragraph [ insert details] and as a result we hereby demand …………..[insert amount being claimed] under Standby Letter of Credit number…….... issued by …………[insert name of Issuing Bank]. Payment in respect of this Beneficiary Statement shall be effected immediately to [insert relevant account details]. We confirm that the signatory(ies) to this Beneficiary Statement are empowered to sign and make this Beneficiary Statement on behalf of the Beneficiary.Terms defined in the Standby Letter of Credit referred to above have the same meaning when used in this Beneficiary Statement. |
| **Modification Proposal Justification***(Clearly state the reason for the Modification)* |
| Under the current rules the Letter of Credit Applicant must be a Market Participant. This proposal would allow more flexibility for Market Participants to satisfy their credit cover obligations and takes account of the tighter access to such products in today’s banking market. The current arrangements could be construed as a barrier to new market entrants.  |
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|  |  |
| ***Please return this form to Secretariat by email to*** *modifications@sem-o.com* |